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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 443

STATE BOARD OF NATUROPATHIC EXAMINERS, ET AL.,
Petitioners,

vs.

WILL WILSON, ATTORNEY GENERAL OF TEXAS, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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September, 1957

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STATEMENT OF THE CASE

Petitioners, State Board of Naturopathic Examiners for the State of Texas, in their own behalf and in behalf of approximately 450 persons licensed to practice naturopathy in Texas, respectfully pray that a Writ of Certiorari to review the judgment of the Supreme Court of Texas in upholding an opinion of the Attorney General of Texas declaring the Texas Naturopathy Act of 1949 unconstitutional.

Petitioners claim that the action of the Supreme Court of Texas in upholding the decision and opinion of the Attorney General violates the 14th Amendment of the United States Constitution and deprives appellants of their property without due process of law.

This proceeding was initiated in the District Court of Travis County, 98th Judicial District which held that the Texas Naturopathic Act was valid. A true copy of the Court's decision is appended hereto as Appendix A. On appeal to the Court of Civil Appeals for the 3rd Supreme Judicial District Court of Texas, the decision of the lower court was reversed on the ground principally that it was vague and was in conflict with the Medical Practice Act of Texas. It ruled, therefore, that the Naturopathy Act of Texas was unconstitutional. A true copy of the decision and opinion of the Court of Civil Appeals, Third Supreme Judicial District of Texas, is appended hereto as Appendix B. Appendix B also includes the text of the Naturopathy Act and the Medical Practice Act.

Based on the decision of the Court of Civil Appeals, Petitioners applied to the Supreme Court of Texas for a writ of error which was refused. A motion for rehearing was also refused. A true copy of the decision of the Supreme Court of Texas in refusing Petitioners' writ of error and in overruling their motion for rehearing is appended hereto as Appendix C.

JURISDICTION

The judgment of the Supeme Court of Texas denying Petitioners' motion for rehearing was rendered on June 12, 1957. (Appendix C). The jurisdiction of this Court to review the judgment of the Texas Supreme Court is conferred by 28 U. S. C. section 1257 (3).

THE FEDERAL CONSTITUTIONAL QUESTION

In requesting a rehearing, Petitioners alleged that the effect of the decision of the Supreme Court of Texas violated Section 1 of the 14th Amendment of the U. S. Constitution, abridging their privileges and immunities and depriving them of property without due process of law. The Petitioners' Motion for Rehearing states that the Court's judgment "is repugnant to the Constitution of the United States, Section 1, of the 14th Amendment thereto, in that the enforcement of such civil and penal provisions of said Medical Practice Acts of Texas by said Appellate and Supreme Courts of Texas, in such manner as to entirely and wholly destroy said Naturopathy Act and Statute of Texas, abridges the privileges and immunities of Petitioners, who are citizens of the United States, and deprives them of liberty, property, title, rights, and privileges and immunities without due process of law, and denies to such persons within its jurisdiction the equal protection of the laws, and violates the civil rights of the Petitioners under the applicable laws, Statutes and Constitution of the United States."

The Petitioners further state in their Petition for Rehearing that the Texas Supreme Court's interpretation of the Naturopathy Act and the Medical Practice Act of Texas gives a preference to the medical profession and discriminates against practitioners of naturopathy thereby creating "an illegal monopoly" in favor of doctors of medicine in violation of the equal protection clause of the 14th Amendment.

QUESTIONS PRESENTED

1. Whether the Supreme Court of Texas erred, in refusing Petitioners' application for writ of error,

thereby upholding the opinion of the Attorney General of Texas declaring the Naturopathy Act of Texas unconstitutional and void and depriving Petitioners of their property without due process of law in violation of the 14th Amendment of the U. S. Constitution.

2. Whether the police power of the State of Texas has been asserted in a manner discriminatory to Petitioners thereby depriving them of the equal protection of the laws and abridging their privileges and immunities in violation of the 14th Amendment of the U. S. Constitution.

3. Whether the Texas Supreme Court's action gave effect to an interpretation of the Naturopathy Act of Texas that created a monopoly in the medical profession thereby depriving Petitioners of vested rights in violation of the 14th Amendment of the U. S. Constitution.

ARGUMENT

In 1949, the Texas Legislature, with the purpose of protecting the health and welfare of its people, enacted three major Acts, the Basic Sciences Act, the Naturopathy, and the Chiropractic Act. There was an urgent need for the enactment of legislation on these subjects, and the Texas Legislature took action under its police power. The Attorney General of Texas has completely evaded the intent of the Texas Legislature by holding the law wholly void for vagueness.

There seems to be no question that the States have the power to enact special laws for dentists, optometrists, chiropodists, nurses, chiropractors, etc. Classification for special treatment of these scientific approaches to healing has been recognized for many years. The State of Texas has made this classification, and

in doing so, has made conscientious effort to treat all of the health practitioners fairly and objectively. To act otherwise would be discriminatory and in violation of the "equal protection" clause of the 14th Amendment of the U.S. Constitution.

Under the Naturopathy Act of Texas, Petitioners acquired important rights which the Texas Supreme Court has permitted to be taken away by an arbitrary administrative ruling of the Texas Attorney General. The decision of the Texas Supreme Court does not answer the fundamental question that the Legislature has created rights under an exercise of its police power and that such rights are now in jeopardy by reason of the Attorney General's ruling of vagueness.

Under the Texas Naturopathy Act, naturopathy is defined as "that philosophy and system of the healing art embracing prevention, diagnosis, and treatment of human ills and functions by the several properties of air, light, heat, cold, water, manipulation with the use of such substances, nutritional as are naturally found in and required by the body, excluding drugs, Surgery, X-ray, and radium therapy, and the use of X-ray equipment." Under the provisions of this Act, naturopaths have been given a separate and distinct classification from "practitioners of medicine." No-one can deny the power of the Texas Legislature to make this classification as a fair and reasonable exercise of its police power. In doing so, it has made a classification no different from that which relates to optometry, opticians, or chiropractry.

The practice of naturopathy is expressly and specifically limited by the plain language contained in the definition which embraces and specifically provides for

a separate classication of a system and philosophy of the healing art dealing with prevention, diagnosis, and treatment of human ills by non-medical means. Even assuming the language of the definition vague in its application, rights have been acquired over a period of several years which should not be permitted to be destroyed by administrative action which does not question the power of the Texas Legislature to classify naturopaths for special treatment under an exercise of its police power. The longer a statute remains on the law books, the more difficult should be efforts to nullify that statute. The Texas Supreme Court acted without due regard to the rights of Petitioners in adopting a construction rendering the Naturopathy Act void for vagueness.

The decision of the Texas Supreme Court also has a discriminatory effect in that it favors medical practitioners and establishes a monopoly in the medical profession thereby arbitrarily violating the "equal protection" clause of the U. S. Constitution. This is directly contrary to the intention of the Texas Legislature when it enacted the Naturopathy Act. Moreover, there is no argument with the use of the police power to regulate for the public health of the community. However, where the regulation of a field of honest endeavor is sanctioned by a state law but is administered arbitrarily so as to be discriminatory in its treatment of those authorized to engage in such endeavor, it violates fundamental privileges and rights which the U. S. Constitution intended to protect.

There is no evidence in this case that the practice of naturopathy, as authorized by the Texas Legislature, is harmful to health. Nor is there any claim that the Legislature lacks the authority to legislate for the

health of the community. On the contrary, the Legislature has classified naturopathy for special legislative treatment and pursuant to such legislation, 450 naturopaths have acquired definite rights which are protected by the U. S. Constitution. To proceed against naturopaths, without making any effort toward attacking other forms of healing, is clear evidence of an intent by Texas administrative authorities to discriminate against that profession.

It is well established that States have the authority to prohibit the practice of any limited system of healing arts. 41 Am. Juris. 133. It is also fundamental in our system of jurisprudence that legislative recognition of such arts create valuable property rights that cannot be taken away arbitrarily or discriminatorily without violation both State and Federal Constitutions. And yet the Texas Supreme Court's interpretation of the Medical Practice Act sanctions and gives effect to arbitrary and discriminatory action against the Naturopaths by the Attorney General of Texas.

This case is not similar to those previously brought before this Court in which the State Legislature itself has taken action to prohibit certain types of practice in the interest of protecting the health of its citizens. Here, the State of Texas sanctions the practice of naturopathy and has established reasonable standards for regulation and protecting that practice. There is no question of the right of the legislature to make policy on this subject. Nor is there any denial that over 450 naturopaths have acquired rights by reason of this legislative policy. However, there is nothing in the opinion of the Supreme Court of Texas that resolves these rights. Nor is there any charge of abuse or irregularity on the part of naturopaths in Texas.

APPENDIX A

No. 103235

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

98TH JUDICIAL DISTRICT

STATE BOARD OF NATUROPATHIC EXAMINERS, ET AL., *Plaintiffs*

VS.

HONORABLE JOHN BEN SHEPPERD, The Attorney General of Texas, et al, *Defendants*

Judgment

On the 26th day of March, A.D. 1956, during a regular term of the Court and on a regular setting, came on to be heard the above entitled and numbered cause, wherein Dr. J. G. W. Shepard, Dr. J. M. Peery, Dr. William O. Nance and Dr. Henry Schlichting, Jr., all suing individually and as members of the State Board of Naturopathic Examiners, and on behalf of approximately 450 people licensed to practice naturopathy in the State of Texas, are plaintiffs, and wherein Honorable John Ben Shepperd, the Attorney General of the State of Texas, and Honorable Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, are defendants, and came the plaintiffs by their attorneys of record, and came also the defendants by their attorneys of record, and no jury having been demanded, the trial proceeded before the Court, and the Court having heard the pleadings read, the evidence and argument of the counsel, is of the opinion and finds that the plaintiffs should have and recover of and from the defendants a judgment of this Court DECREEING, DETERMINING and DECLARING that House Bill No. 69, Acts of the Fifty-first Legislature of the State of Texas, Regular Session, 1949, Chapter 480, pages 890-899, as amended by House Bill No. 365, Acts of the Fifty-second Legislature of the State of Texas, Regular Session, 1951, Chapter 69, pages 114-115, and amended by

House Bill No. 353, Acts of the Fifty-third Legislature of the State of Texas, Regular Session, 1953, Chapter 343, pages 849-851, which said Acts and the amendments thereto are codified as Article 4590d in Vernon's Civil Statutes of Texas, is a VALID and CONSTITUTIONAL statute; the Court further finds that all relief prayed for by the defendants, the Honorable John Ben Shepperd, the Attorney General of the State of Texas, and the Honorable Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, should be in all things denied;

It is therefore ORDERED, ADJUDGED, DECREED, DETERMINED and DECLARED that the plaintiffs, Dr. J. G. W. Shepard, Dr. J. M. Peery, Dr. William O. Nance and Dr. Henry Schlichting, Jr., individually and as members of the State Board of Naturopathic Examiners, and on behalf of approximately 450 people licensed to practice naturopathy in the State of Texas, do have and recover of and from the defendants, the Honorable John Ben Shepperd, the Attorney General of the State of Texas, and the Honorable Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, a judgment decreeing and declaring that House Bill No. 69, Acts of the Fifty-first Legislature of the State of Texas, Regular Session, 1949, Chapter 480, pages 890-899, as amended by House Bill No. 365, Acts of the Fifty-second Legislature of the State of Texas, Regular Session, 1951, Chapter 69, pages 114-115, and amended by House Bill No. 353, Acts of the Fifty-third Legislature of the State of Texas, Regular Session, 1953, Chapter 343, pages 849-851, which said Acts and the amendments thereto are codified as Article 4590d in Vernon's Civil Statutes of Texas, is a VALID AND CONSTITUTIONAL statute. It is further ORDERED, ADJUDGED AND DECREED that all relief prayed for by defendants be and the same is hereby denied.

It is further ORDERED, ADJUDGED and DECREED that the defendants pay all costs of Court incurred herein, for which, if the same is not timely paid, let writ of execution issue,

to all of which judgment and orders of the Court the defendants then and there in open Court excepted and gave notice of appeal to the Court of Civil Appeals, Third Supreme Judicial District, sitting at Austin in Travis County, Texas.

ENTERED this the 24th day of May, A.D. 1956.

(s) CHARLES O. BETTS
Judge Presiding

APPENDIX B

IN THE COURT OF CIVIL APPEALS, THIRD SUPREME JUDICIAL DISTRICT OF TEXAS, AT AUSTIN

No. 10,447

WILL WILSON, ATTORNEY GENERAL ET AL., *Appellants*

VS.

STATE BOARD OF NATUROPATHIC EXAMINERS ET AL., *Appellees*

From District Court of Travis County, 98th Judicial District, No. 103,235, Honorable Chas. O. Betts, Judge.

The facts of this case are stated in the pleadings and are agreed to be correct.

The sole question of law presented is the constitutionality, vel non, of Article 4590d,[1] V.A.C.S., known as the Naturopathic Act.

---

[1] H.B. 69, Acts 51st Leg., Reg. Sess., 1949, ch. 480, p. 890, as amended H.B. 365, Acts 52nd Leg., Reg. Sess. 1951, ch. 69, p. 114, as amended by H.B. 353, Acts 53rd Leg., Reg. Sess. 1953, ch. 343, p. 849.

This suit for declaratory judgment was against the Attorney General and Comptroller of the State of Texas and was brought by persons alleging themselves to be members of the State Board of Naturopathic Examiners on behalf of such Board, for themselves individually and on behalf of 450 other persons alleged to be licensed to practice naturopathy in this State. The only relief sought was that the Act in question be declared constitutional.

The Attorney General has heretofore ruled this Act unconstitutional. Atty. Gen. op. No. S-60 (1953).

The specific constitutional provision which the statute is alleged to violate is Sec. 31, Art. XVI, Texas Constitution, which provides:

> "The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for mal-practice, but no preference shall ever be given by law to any schools of medicine."

The validity of the statute is also attacked for vagueness. If vague it is invalid, as to its penal provisions, under Art. 6, V.A.P.C., and unconstitutional under Sec. 10, Art. I, of our Constitution. Ex parte Slaughter, 243 S.W. 478, Tex. Ct. Cr. App.; Ex parte Meadows, 109 S.W. 2d 1061, 133 Cr. 292. See 8 Tex. L. Rev. 253.

It is our opinion that the statute is invalid upon both grounds urged.

Art. 4510, V.A.C.S., in part provides:

> "Any person shall be regarded as practicing medicine within the meaning of this law:
>
> "(1) Who shall publicly profess to be a physician or surgeon and shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; (2) or who shall treat or offer to treat an disease or disorder, mental or physical or

any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; . . ."

Similar provisions have been incorporated in the Penal Code, Art. 741, V.A.P.C.

The statute in question (4590d) defines the practice of naturopathy as follows:

"For the purpose of this Act, naturopathy and natureopathy shall be construed as synonymous terms, and the practice of naturopathy or natureopathy, is hereby defined as that philosophy and system of the healing art embracing prevention, diagnosis, and treatment of human ills and functions by the use of several properties of air, light, heat, cold, water, manipulation with the use of such substances, nutritional as are naturally found in and required by the body, excluding drugs, Surgery, X-ray and radium therapy, and the use of X-ray equipment.

"Nothing in this Act shall be construed to be authority for any naturopath, licensed hereunder, to practice medicine as defined by the laws regulating the practice of medicine in this State, Surgery, Dentistry, Osteopathy, Chiropractic, Christian Science, or any other treatment or system of treatment authorized for by law, nor shall the provisions of this Act in any way or manner apply to or affect the practice of Medicine, Surgery, Osteopathy, Christian Science, or any other treatment or system of treatment authorized and provided for by law for the prevention of human ills." (Sec. 18).[2]

---

[2] Section 5 of this Act provides in part:

"Provided, however, no provisions of this Act shall be construed as repealing, modifying, or suspending the Medical Practice Act governing the issuances of licenses to physicians and surgeons, or as in any way lessening such requirements."

It is obvious that the practice of medicine as defined by Art. 4510 supra, includes the practice of naturopathy as defined by the above statute.

It is also obvious that the practice of naturopathy as so defined is the practice of medicine as statutorily defined but limited to certain means and excluding specific means.

Thus it is evident that while the naturopathy statute affirmatively authorizes a limited practice of medicine it also affirmatively denies that the statute shall have such effect.

We are uncertain as to which legislative path we should follow. This uncertainty, in our opinion, spells the death of the statute.

A similar question was before our Court of Criminal Appeals in Ex parte Halstead, 182 S.W. 2d 479. The Court there had under consideration the Chiropractic Act of 1943. This Act defined chiropractic as the science "... of analyzing and adjusting the articulations of the human spinal column, and its connecting tissues, without the use of drugs or surgery ..." The Act also provided that "chiropractic shall in no sense be construed or defined as treatment or attempted treatment of patients by use of surgery or medicine," but it provided that a chiropractor could treat disease by chiropractic.

The practice of medicine was defined in 1944, the date of Halstead, as now except for a proviso added in 1949 and not here applicable. The Court in a very strong and well reasoned opinion by its now Judge Davidson held the 1943 Chiropractic Act invalid. We quote his language:

> "As thus construed, Section 3 and 3a are in irreconcilable conflict, for, by the terms thereof, a chiropractor is both permitted to treat, and is prohibited from treating, patients for illnesses and diseases. He is both within and without the provisions of the Medical Practice Act defining the practice of medicine. Such being true, it is impossible, from the wording of the

Act, to determine what is chiropractic and the practice thereof, or whether same is or is not the practice of medicine, under the Medical Practice Act, as judicially determined."

Appellees place some reliance upon *Baker* v. *State*, 240 S.W. 924, 91 Tex. Cr. R. 521, which sustained the validity of an Act defining and regulating the practice of optometry. This case was distinguished by the Court in Halstead on the ground, equally applicable here, that the optometrist by the Act was limited to the eye and to correcting defective vision. He was prohibited from treating the eye for disease and disorder as well as from practicing medicine.

It is our opinion that the Naturopathy Act attempts to both grant and deny to those complying with its terms the privilege of practicing medicine as that term is defined by the statutes of this State. It is, therefore impossible of interpretation and enforcement and is wholly void.

If the Act should be construed as authorizing, and not denying, the practice of medicine in a specialized field then it is void because violative of the preference provision of the Constitution set out above.

Art. 4501, V.A.C.S., provides, in part:

"All applicants for license to practice medicine in this State not otherwise licensed under the provisions of law must successfully pass an examination by the Board of Medical Examiners. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. Applicants to be eligible for examination must be citizens of the United States and must present satisfactory evidence to the Board that they are more than twenty-one (21) years of age, of good moral character, who have completed sixty (60) semester hours of college courses, other than in a medical school, which courses would be acceptable, at time of completing same, to the University of Texas for credit on a Bachelor of Arts Degree or a Bachelor of Science Degree, and who are graduates of bona fide

reputable medical schools; a reputable medical school shall maintain a course of instruction of not less than four (4) terms of eight (8) months each; shall give a course of instruction in the fundamental subjects named in Article 4503 of the Revised Civil Statutes of Texas of 1925, as amended by this Act; and shall have the necessary teaching force, and possess and utilize laboratories, equipment, and facilities for proper instruction in all of said subjects."

and Article 4503, V.A.C.S., provides, in part:

"Examinations shall be conducted on anatomy, physiology, chemistry, histology, pathology, bacteriology, diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence."

The Naturopathy Act, provides in part:

"It shall be the duty of the Board to examine applicants for license to practice naturopathy in this State; and the Board shall examine and grade all papers submitted by such applicants and report to such applicants within a reasonable time after the date of such examination, and said report shall give to each applicant the grades made by said applicant upon each and every subject upon which he or she was examined by such Board. Each person applying for examination shall pay to said Board a fee of Twenty-five Dollars ($25), and upon passing a satisfactory examination before said Board in such basic subjects as anatomy, including histology, physiology, chemistry, bacteriology, hygiene, public health and pathology and on diagnosis and subjects in the Arts and Sciences of Naturopathy which the Board may require, shall be granted a license to practice naturopathy in this State. . . . (Sec. 8.)

"Sec. 9. Each applicant for a license to practice naturopathy in this State shall be not less than twenty-one (21) years of age, a citizen of the United States of America, and shall

"(a) present a diploma from a high school;

"(b) evidence of two (2) years of college work if graduated from a naturopathic college after January 1, 1954;

"(c) four (4) years of nine (9) months each in a reputable, nationally recognized naturopathic college, or a medical college, whose entrance requirements and courses of instruction are as high as those adopted by a better class of medical schools and naturopathic colleges of the United States of America;

"(d) each applicant must serve one (1) year of internship in some recognized hospital;

"(e) and must give evidence of being a person of good moral character."

Halstead, supra, is directly in point here also. We quote again from Judge Davidson's opinion:

"'Under the Medical Practice Act, one desiring to practice medicine must possess certain qualifications as to character and educational attainments, Art. 4501, R.C.S., and must pass a satisfactory examination upon certain basic subjects, Art. 4503, R.C.S.

"Under the Act before us, one desiring to practice chiropractic must also possess certain qualifications of character and educational attainments, and must pass a satisfactory examination upon certain basic and special subjects. (Sec. 7 of the Act.)

"The educational qualifications for each are materially different. Those under the Medical Practice Act are decidedly more onerous. There is a direct difference between the subjects upon which the applicants must be examined. In fact, only four subjects are embraced in each examination. As to which is the more onerous, it is not for us to say. The fact remains that there is a material difference in the subjects embraced in the respective examinations. Assuming, then, that, under the Act before us, the legislature has set up, recognized, and defined chiropractic as a system, means, and method for the treatment of diseases and disorders of the human body, and that practictioners thereof are authorized to treat, by chiropractic, patients for

diseases and disorders, it is evident that the legislature has preferred such science and such practitioners over all others engaged in doing the same thing, that is, in treating the human body for diseases and disorders, because the chiropractor is not required to have the same educational qualifications, nor is he required, as a condition precedent to his right to so treat patients, to pass a satisfactory examination upon the same subjects that are required of all others similarly situated.

"Thus a preference has been, by the legislature, accorded and extended the chiropractic system of the healing art, in violation of Art. 16, Sec. 31, of our State Constitution."

The differences between the requirements of the Medical Practice Act and those of the Naturopathic Act are apparent and substantial. It is equally apparent that the requirements of the Medical Act are more burdensome than those of the Naturopathy Act. It follows that an unconstitutional preference was attempted in favor of the latter school of medicine and that it is inoperative and void.

These conclusions dispense with the necessity of considering and determining other subordinate points presented by appellants.

The judgment of the Trial Court is reversed and judgment is here rendered declaring the Naturopathy Act, Art. 4590d V.A.C.S., void.

ROBERT G. HUGHES,
Associate Justice

Reversed and rendered
Filed: January 30, 1957.

APPENDIX C

IN THE SUPREME COURT OF TEXAS

May 1, 1957

No. A-6270

From Travis County, Third District

STATE BOARD OF NATUROPATHIC EXAMINERS, ET AL.

vs.

WILL WILSON, ATTORNEY GENERAL, ET AL.

This day came on to be heard application of petitioners for a writ of error to the Court of Civil Appeals for the Third District and the same having been duly considered, and the Court having determined that the application presents no error which requires a reversal of the judgment of the Court of Civil Appeals, it is ordered that the application be refused; that the applicants, J. G. W. Shepard, J. M. Peery, William O. Nance and Henry Schlichting, Jr., individually and in their capacities as members of the State Board of Naturopathic Examiners, and on behalf of approximately 450 people licensed to practice naturopathy in Texas, pay all costs incurred on this application.

June 12, 1957

No. A-6270

From Travis County, Third District

STATE BOARD OF NATUROPATHIC EXAMINERS, ET AL.

vs.

WILL WILSON, ATTORNEY GENERAL, ET AL.

This day came on to be heard petitioners' motion for rehearing of application for writ of error, and, after due

consideration, it is ordered that said motion be, and is hereby, overruled.

I, Geo. H. Templin, Clerk of the Supreme Court of Texas, hereby certify that the above and foregoing is a true and correct copy of the judgment and order on motion for rehearing of application for writ of error No. A-6270, State Board of Naturopathic Examiners et al. vs. Will *Will* Wilson, Attorney General, et al., as the same appear of record in the minutes of this Court.

In Testimony Whereof witness my hand and the seal of the said Court at the City of Austin, this, the 17th day of July, 1957.

Geo. H. Templin, Clerk

By Jewell Seeliger
Mrs. Jewell Seeliger
Deputy

APPENDIX D

Constitution of the United States

Amendment XIV

Section I.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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ANSWER AND BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILL WILSON
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Capitol Station,
Austin, Texas

Attorneys for Respondents

September, 1957

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ANSWER AND BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

NOW COME Respondents and with respect files their brief in opposition to the petition for writ of certiorari.

STATEMENT OF THE CASE

This case is a declaratory judgment suit, brought originally by Petitioners in the District Court of Travis County, Texas, 98th Judicial District, to

determine the validity of the Naturopathic Act of Texas. (Article 4590d, Vernon's Texas Civil Statutes).

The facts of this case are stated in the pleadings and are agreed to be correct. These facts as pleaded by all parties reveal that the alleged State Board of Naturopathic Examiners tendered certain fees collected by it to the State Treasury and the State Comptroller refused to accept the fees on the ground that the Naturopathic Act was invalid for vagueness and in violation of the preference provision of Section 31 of Article XVI of the Constitution of Texas.

OPINIONS BELOW

The 98th District Court of Texas entered a judgment on May 24, 1956, declaring the Naturopathic Act valid. The Court of Civil Appeals for the Third Supreme Judicial District of Texas, on January 30, 1957, reversed and rendered the judgment of the trial court and declared the Naturopathic Act of Texas invalid for vagueness, in that it affirmatively authorized and affirmatively denied to those complying with its terms the privilege of practicing medicine as that term is defined by the statutes of this State. The judgment of the Court of Civil Appeals also declared the Naturopathic Act void because violative of the preference provision of Section 31 of Article XVI of the Constitution of Texas. The Supreme Court of Texas on May 1, 1957, refused Petitioners' Application for Writ of Error, having determined that the application presented no error which required a reversal of the judgment of the

Court of Civil Appeals. On June 12, 1957, the Supreme Court of Texas overruled Petitioners' Motion for Rehearing of Application for Writ of Error.

JURISDICTION

This is a declaratory judgment suit and Petitioners have exhausted all their remedies in the state courts of Texas.

It is questioned by Respondents that any substantial federal question is presented for adjudication by the Supreme Court of the United States. There is but one question; and that is, whether this Court will exercise its jurisdiction to decide whether the state court of last resort has correctly interpreted state laws.

QUESTION PRESENTED

Will the Supreme Court of the United States grant certiorari for the reason that Petitioners have asserted in their petition that the Supreme Court of Texas has erroneously interpreted State laws, and that such interpretation deprives Petitioners of their property without due process of law in violation of the 14th Amendment of the United States Constitution?

ARGUMENT

This case was instituted by Petitioners pursuant to the provisions of the Declaratory Judgments Act of Texas to determine whether the Naturopathic Act of Texas is in violation of certain provisions of the Constitution of Texas. The judgment of the state court rests solely on an interpretation of the Naturopathic Act of Texas, the Medical Practice

Act of Texas, Section 10 of Article I of the Constitution of Texas, and Section 31 of Article XVI of the Constitution of Texas.

The Supreme Court of the United States will not review judgments of state courts that rest on adequate and independent state grounds. *Black v. Cutter Laboratories*, 351 U.S. 292, 298; *Herb v. Pitcairn*, 324 U.S. 117, 125; *Klinger v. State of Missouri*, 13 Wall. (U.S.) 257, 263; *Murdock v. Memphis*, 20 Wall. (U.S.) 590, 636; *Berea College v. Kentucky*, 211 U.S. 45, 53; *Enterprise Irrig. Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164; *Fox Film Corp. v. Muller*, 296 U.S. 207, 210.

All questions arising under the Constitution of the state alone are finally settled by the judgment of the state court. *Walker v. Sauvinet*, 92 U.S. 90, 92. The proper construction, interpretation and effect of a state statute or constitutional provision being a question of local law and not Federal law, the judgment of a state court thereon is not subject to review by this Court. *Knights of Pythias v. Meyer*, 265 U.S. 30, 32; *Hotel & R. Employee's International Alliance v. Wisconsin Employment Relations Bd.*, 315 U.S. 437, 438; *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 680; *Morehead v. New York*, 298 U.S. 587, 609; *Senn v. Tile Layers' Protective Union*, 301 U.S. 468, 477; *Moore v. Illinois Central R. Co.* 312 U.S. 630, 633.

Applying these principles to the instant case, the judgment of the state court rests on adequate and independent state grounds. First, the state court has entered judgment declaring that the Act in question is invalid since it affirmatively authorizes a limited

practice of medicine and also affirmatively denies that the statute shall have such effect thereby attempting to both grant and deny to those coming within its terms the privilege of practicing medicine as defined by the statutes of this State. Second, the state court has entered judgment declaring the Act in question to be in violation of the preference clause of Section 31, Article XVI of the Constitution of Texas. We respectfully submit, therefore, the judgment of the state court rests on adequate and independent state grounds, and that the United States Supreme Court should not grant certiorari in this matter.

CONCLUSION

WHEREFORE, it is respectfully submitted that the Petition for Writ of Certiorari to review the judgment of the Supreme Court of Texas should be denied.

Respectfully submitted,

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September, 1957

SERVICE

I, C. K. RICHARDS, Assistant Attorney General of Texas, am a member of the Bar of the Supreme Court of the United States, and I do hereby certify that a copy of the foregoing brief has been forwarded by United States Air-mail, postage prepaid, to Petitioners' Attorneys, Mr. Benedict F. FitzGerald, Jr. and Mr. John B. Olverson, National Press Building, Washington 4, D. C.

C. K. RICHARDS
Assistant Attorney General
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 443

STATE BOARD OF NATUROPATHIC EXAMINERS, ET AL.,
Petitioners,

vs.

WILL WILSON, ATTORNEY GENERAL OF TEXAS, ET AL.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Attorneys for Petitioners

December, 1957

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Supreme Court of the United States

OCTOBER TERM, 1957

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WILL WILSON, ATTORNEY GENERAL OF TEXAS, ET AL.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioners, State Board of Naturopathic Examiners, et al., pray that this Court grant rehearing of its order of November 12, 1957, denying petition for a writ of certiorari, the effect of which is to sustain the judgment of the Supreme Court of Texas refusing petitioners' request for writ of error. Thus, the action of this Honorable Court forecloses any further judicial relief in behalf of petitioners unless this motion for rehearing is granted.

REASONS FOR GRANTING REHEARING AND ISSUING WRIT OF CERTIORARI

1. Presumably, petitioners have not demonstrated to the Court the existence of special and important reasons for granting a review of this case. This is probably due to the failure of the petitioners to show clearly and with proper emphasis that the result of the Court's denial of a writ of certiorari not only deprives them of their constitutional rights but, of equal importance, does so under circumstances in which petitioners have not been given an adequate review of fundamental questions raised under the Federal Constitution which directly affect the rights of 450 practitioners of naturopathy in the State of Texas. Thus, refusal of this Honorable Court to grant a writ of certiorari will result in denying petitioners of constitutional rights without adequate review.

The dilemma in this case exists because of the manner in which the federal and non-federal questions were treated in the Supreme Court of Texas and the courts below. The issue presented before the court of original jurisdiction, namely the District Court of Travis County, concerned merely the question whether the Texas Naturopathy Act was invalid on the ground of vagueness and uncertainty. The Court held it was valid thereby rejecting the Texas Attorney General's opinion holding this Act invalid. (Petition for Writ of Certiorari, Appendix A). Of extreme importance to petitioners, however, is the fact that the federal constitutional questions were not reviewed and hence were not considered in the judgment rendered by the court.

On appeal to the Court of Civil Appeals for the 3rd Supreme Judicial District Court of Texas, the decision

of the lower court was reversed on the ground the Naturopathy Act in question was invalid for vagueness under the Texas Constitution. (Petition for Writ of Certiorari, Appendix B). Hence, the Federal questions were not considered in rendering the judgment by that court.

The petitioners' application for writ of error to the Supreme Court of Texas was refused. And here again, the judgment of the court was rendered without reference to federal questions involving important Constitutional rights. However, the federal constitutional questions were clearly presented to the Supreme Court of Texas on Petitioners' motion for rehearing. (Petition for Writ of Certiorari, page 3). The motion was overruled. (Petition for Writ of Certiorari, Appendix C).

Thus, because of the way this case developed in the courts below, there is nothing in the judgments of the lower courts that would indicate that the federal constitutional questions involved have been ruled upon—although these questions were inherent throughout the entire proceedings

The failure of the Supreme Court of Texas to pass on the federal questions raised should not be conclusive on the petitioners. They are entitled to have these questions reviewed. See *Chicago B. and Q. R. Co.* v. *Illinois, ex rel. Com'rs*, 200 U.S. 561, 580; *Wood* v. *Chesborough*, 228 U.S. 672, 676.

The federal questions were always inherent in the proceedings in the lower courts and were specifically raised in petitioners' motion for rehearing to the Supreme Court of Texas. It would be grave error to permit the outcome of this case to rest on a non-federal

question thereby denying petitioners the right of review on important questions of Constitutional law. See *Enterprise Irrigation District* v. *Farmer's Mutual Canal Co.*, 243 U.S. 157, 164.

Therefore, the granting of certiorari by this court is of utmost importance if petitioners are to have the opportunity to show that basic and fundamental rights under the Federal Constitution have been violated. It is petitioners' contention that unless such relief is granted, the effect will be to deny to them a review of vital federal questions involving their constitutional rights. For it is quite obvious in reviewing the judgments rendered by the courts below that a review has not been given to these constitutional rights.

It is petitioners' contention, therefore, that they are entitled to have the question of violation of their constitutional rights reviewed and adjudicated in a real and substantial sense. And it is within the province of this court to determine whether there has been a substantive review, and a correct adjudication, of such rights by the lower courts. *Murdock* v. *Memphis*, 20 Wall. 590, 636. See also *Eustice* v. *Bolles*, 150 U.S. 361, 370.

2. The broad question presented in this case is vitally important to future professional practice involving the treatment of human ills as well as other professional endeavors. It goes to the very heart of our American system of freedom of endeavor and the nature and extent of the power of State legislatures to regulate such freedom. There exists, therefore, a need for the establishment of rules for the guidance of lower courts in determining the appropriate balance between freedom of endeavor on the one hand and

state police power regulation on the other in the treatment of human ills and in the regulation of similar private endeavors. Establishing and maintaining a proper balance between individual freedom, on the one hand, and the exercise of state power, on the other, is the very essence of providing a proper basis for protecting private property without violating due process. In speaking about the fundamental nature of due process, this Court said in a recent case, *Breithaupt* v. *Abram,* 77 S. Ct. 408, 410: ". . . due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensative person, but by the whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct. It is on this bedrock that this Court has established the concept of due process."

Petitioners contend that due process has not prevailed in this case and that, unless this Court grants the relief requested, they will be denied the opportunity to a review of federal questions involving important and vital Constitutional rights.

CONCLUSION

For the reasons set forth above and in the petition for a writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Texas.

Respectfully submitted,

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BENEDICT F. FITZGERALD, JR.

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JOHN B. OLVERSON

Counsel for Petitioners

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

.....

BENEDICT F. FITZGERALD, JR.
Counsel for Petitioners

Service

I, Benedict F. Fitzgerald, Jr., attorney for petitioners in the above entitled action, hereby certify that on the sixth day of December, 1957, I served the above Petition for Rehearing upon Will Wilson, Attorney General of the State of Texas, by depositing a copy in the United States mails, postpaid, addressed to him at his office at Capitol Station, Austin, Texas.

.....

BENEDICT F. FITZGERALD, JR.